

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**BRIAN CARRICO; KACIE CARRICO;
DON GATLIN; and DORA GATLIN;
individually and on behalf of all others
similarly situated,**

Plaintiffs,

v.

**UPONOR, INC.; UPONOR NORTH
AMERICA, INC.; DOES 1 through 100,
inclusive, whose true names are unknown,**

Defendants.

Case No. 3:23-CV-00497

District Judge Eli Richardson

Magistrate Judge Jeffrey S. Frensley

**DEFENDANT UPONOR, INC.’S MOTION TO COMPEL ARBITRATION OR,
ALTERNATIVELY, TO (1) DISMISS PLAINTIFFS’ COMPLAINT AND CLASS
ALLEGATIONS; AND (2) STRIKE CLASS ALLEGATIONS**

Defendant, Uponor Inc. (“Uponor”) will and hereby does move this Court for an order compelling individual arbitration. Should the Court decline to compel arbitration, Uponor will and hereby does move the Court for an order dismissing Plaintiffs’ claims and dismissing or striking Plaintiffs’ class allegations. This Motion is brought pursuant to Federal Rules of Civil Procedure 12(b)(6), 12(f), 23(c)(1)(A), and 23(d)(1)(D); as well as the Federal Arbitration Act (“FAA”). In support of the requested relief, Uponor states as follows:

1. The Court should compel Plaintiffs Brian Carrico, Kacie Carrico, Don Gatlin, and Dora Gatlin (“Plaintiffs”) to arbitrate their claims on an individual basis pursuant to the arbitration clause contained in the binding express warranty applicable to and governing any Uponor product at issue in this action – including the referenced cross-linked polyethylene pipe (“PEX”).

2. If the Court does not compel this action to arbitration, then it should dismiss Plaintiffs’ claims and strike their class allegations as follows:

a. Plaintiffs' claims for strict liability and negligence should be dismissed because they are barred by Tennessee's economic loss rule.

b. Plaintiffs' claims for strict liability and negligence should be dismissed because Plaintiffs have failed to plead facts establishing the essential element of causation.

c. Plaintiffs' claim for breach of implied warranty should be dismissed because: (i) the Warranty governing the Uponor PEX disclaims implied warranties; and (ii) the claim also is barred by the applicable four-year statute of limitations under Tenn. Code Ann § 47-2-725(1).

d. Plaintiffs' class allegations should be stricken in their entirety because Plaintiffs' proposed class definition is overbroad and not ascertainable on its face, including because it seeks relief for putative class members who have not experienced any actual property damage.

This Motion is based upon this Notice; the Memorandum of Points and Authorities attached hereto; the concurrently filed Declaration of Stacey Beissel and the exhibit thereto; the pleadings, records and files in this action; and such other oral and documentary evidence as may be presented at or before any hearing on this Motion.

Pursuant to Civil Local Rule 7.01, prior to filing this Motion, counsel for Uponor conferred with Plaintiffs' counsel regarding the dispute discussed herein, and understands that Plaintiffs will oppose the Motion.

Dated: July 20, 2023

By: /s/ M. Andrew Pippenger

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that the foregoing pleading was electronically filed with the Clerk of Court using the CM/ECF filing system which automatically sends email notifications of such filing to the following attorneys of record:

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